

**DURHAM, NORTH CAROLINA
MONDAY, NOVEMBER 20, 2006
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Excused Absence: Mayor Bell.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Pro Tempore Cole-McFadden called the meeting to order.

MOTION by Council Member Stith seconded by Council Member Catotti to excuse Mayor Bell from the November 20, 2006 City Council Meeting and the November 21, 2006 City Council Work Session and to excuse Council Member Clement from the November 21, 2006 City Council Work Session was approved at 7:05 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

At this time during the meeting, the Mayor Pro Tem asked for a moment of silent meditation and the Pledge of Allegiance was led by Council Member Clement.

Mayor Pro Tempore Cole-McFadden read a Resolution Memorializing Rev. Robert Excel Page.

The Mayor Pro Tem asked for priority items from the City Manager, City Attorney and City Clerk. There were no priority items from the City Manager and City Clerk. City Attorney Blinder announced a closed session item has been added to the agenda.

City Council Members made comments on the following events attended and special recognition of individuals, organizations, etc: Mayor Pro Tempore Cole-McFadden and Rev. Haywood Holderness on receiving an award during the Durham Branch of the NAACP banquet; Mayor Bell received the Leadership award from the North Carolina Black Municipal Elected Officials and Pastor Dr. Leroy Davis' retirement from Mt. Gilead Baptist Church.

City Council Member Clement requested a report on the various fines levied against the City regarding stream violations.

City Manager Baker stated there was discussion on the sewer spill fine which was \$32,000 that was appealed with DENR and made comments on the Environmental Protection Agency [EPA] \$5,000 settlement.

Council Member Clement requested a full report on the sewer spill and EPA settlement at the December 4, 2006 City Council Meeting.

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City Council Members made comments on the following events attended and special recognition of individuals, organizations, etc: closing of Joe & Jo's restaurant in downtown Durham; West Village groundbreaking; Art Walk; Neighborhood College Graduation; and Duke University Hospital -- Magnet Hospital designation by the American Nurses Association.

Mayor Pro Tempore Cole-McFadden made comments on the youth participation during NAACP Banquet which honored her.

Mayor Pro Tempore Cole-McFadden asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items: 14, 15, 21 and 41 were pulled.

MOTION by Council Member Stith seconded by Council Member Woodard to approve the Consent Agenda as amended was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

[CONSENT AGENDA]

SUBJECT: VOLUNTARY ANNEXATION PETITIONS RECEIVED BY DECEMBER 1, 2005 - TRIANGLE METRO PHASE 1 - FAYETTEVILLE ROAD ASSEMBLAGE - TRIANGLE METRO PHASE 2

MOTION by Council Member Stith seconded by Council Member Woodard to adopt resolutions scheduling a public hearing for Monday, December 4, 2006 to receive citizens' comments concerning voluntary petitions for the following properties to be annexed with a recommended effective date of December 31, 2006 was approved at 7:27p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

- a) FY2006-04 Triangle Metro Phase 1
- b) FY2006-11 Fayetteville Road Assemblage

Resolution #s 9410 -9411

MOTION by Council Member Stith seconded by Council Member Woodard to adopt a resolution scheduling a public hearing for Monday, December 4, 2006 to receive citizens' comments concerning the voluntary petition for the following property to be annexed with a recommended effective date of June 30, 2007 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

- a) FY2006-04 Triangle Metro Phase 2

Resolution #9412

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SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Council Member Stith seconded by Council Member Woodard to approve City Council Minutes for the October 2, and October 16, 2006 City Council Meetings; and

To approve City Council Action taken at the October 5, 2006 City Council Work Session was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: DURHAM HOUSING AUTHORITY BOARD OF COMMISSIONERS –
RECEIPT AND ACCEPTANCE OF APPLICATIONS**

To receive and accept applications for a citizen to fill one (1) vacancy on the Durham Housing Authority Board of Commissioners with a term to expire on September 28, 2011.

Note: This item was deferred to the December 7, 2006 Work Session.

**SUBJECT: DURHAM AREA TRANSIT AUTHORITY – RECEIPT AND
ACCEPTANCE OF APPLICATIONS**

MOTION by Council Member Stith seconded by Council Member Woodard to receive and accept applications for a citizen to fill one (1) vacancy on the Durham Area Transit Authority for a Regular Member with the term to expire on March 1, 2008 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: HUMAN RELATIONS COMMISSION – RECEIPT AND ACCEPTANCE
OF APPLICATIONS**

MOTION by Council Member Stith seconded by Council Member Woodard to receive and accept applications for citizens to fill one (1) vacancy on the Human Relations Commission for a Minority Female with the term to expire on June 30, 2007 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: CABLE TV ADVISORY BOARD - APPOINTMENTS

MOTION by Council Member Stith seconded by Council Member Woodard to reappoint Warren L. Herndon and to appoint Summer S. Alston to the Cable TV Advisory Board with

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terms expiring on October 31, 2008 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: DURHAM BOARD OF ADJUSTMENT – RECEIPT AND ACCEPTANCE
OF AN APPLICATION**

MOTION by Council Member Stith seconded by Council Member Woodard to receive and accept an application for a citizen to fill one (1) vacancy on the Durham Board of Adjustment for an Alternate Member with the term to expire on June 30, 2009 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: STREET ACCEPTANCE - LYNN HOLLOW – PH 3 & 4 - LYNN
HOLLOW II – PHASE I & II ASHFIELD PLACE – PHASE 2 & 4A -
ABERNATHY PLACE TOWNHOMES - CHADSFORD – PHASE I & II**

MOTION by Council Member Stith seconded by Council Member Woodard to accept the streets on the list for maintenance by the City of Durham was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Lynn Hollow – PH 3 & 4

- 1) Oriskony Way – from the end of Phase 2 construction @ STA 13+20 southeast thru the cul-de-sac (345') and
- 2) Intrepid Court – from the centerline of Oriskony Drive east thru the cul-de-sac (290') and
- 3) Forrestal Drive – from the end of Phase 1 construction east of Stennis Way east to the end of construction @ Lynn Hollow II (260'.)

Lynn Hollow II – Phase I & II

- 1) Forrestal Drive – from the beginning of construction @ the end of Lynn Hollow east then south thru the cul-de-sac (917') and
- 2) Berry Court – from the centerline of Forrestal Drive south thru the cul-de-sac (317') and
- 3) Reedy Way – from the centerline of Forrestal Drive north to the south ditch line of Gibson Road (350'.)

Ashfield Place – Phase 2 & 4A

- 1) Paces Ferry Drive – from the beginning of Ph. 2 construction @ STA 49+71.29 east to the centerline of Paces Ferry Drive (752') and
- 2) Paces Ferry Drive – from the beginning of Ph 4A @ STA 21+80 southeast to

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STA 9+68.53 (1,211') and

- 3) Black Boulder Trail – from the centerline of Paces Ferry Drive east to the end of construction @ STA 1+75.23 (175') and
- 4) White Run Court – from the centerline of Paces Ferry Drive west thru the cul-de-sac (191'.)

Abernathy Place Townhomes

- 1) Abernathy Drive – from the north curb line of Barbee Chapel Road northeast around circle back to Abernathy Drive (574'.)

Chadsford – Phase I & II

- 1) Coronado Lane – from the centerline of Barbee Road to the centerline of Catskill Court (1,157') and
- 2) Catskill Court – from the centerline of Coronado Lane north thru the cul-de-sac (314') and
- 3) Catskill Court – from the centerline of Coronado Lane south thru the cul-de-sac (985'.)

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH TOLL BROS, INC. - FAYETTEVILLE ROAD ASSEMBLAGE

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manger to enter into a water and sewer extension agreement with Toll Bros, Inc. to serve Fayetteville Road Assemblage was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: RESOLUTION MEMORIALIZING JOHN WILSON EDWARDS

MOTION by Council Member Stith seconded by Council Member Woodard to adopt a Resolution Memorializing John Wilson Edwards was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Resolution #9413

SUBJECT: DURHAM AFFORDABLE HOUSING COALITION, INC. FY 2006-2007 SUB-RECIPIENT AGREEMENT

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to execute a performance based sub-recipient contract with the Durham Affordable Housing Coalition in an amount not to exceed \$76,000.00 from Community Development Block Grant funds (CDBG) to provide pre-purchase housing counseling, financial literacy housing counseling, and/or default delinquency housing counseling;

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To authorize the retroactive pay of housing counseling services for DAHC for the period of October 1, 2006 through November 1, 2006; and

To authorize the City Manager to make changes to the Contract which does not increase the agreement amount, lessen Durham Affordable Housing Coalition's duties, or extend the term of the agreement beyond October 31, 2007 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: BUSINESS LOAN REPORT FOR SEPTEMBER 2006

MOTION by Council Member Stith seconded by Council Member Woodard to accept the Business Loan Report for September, 2006 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: AGREEMENT TO PROVIDE CONSTRUCTION SERVICES FOR THE LONG MEADOW PARK PHASE II RENOVATIONS PROJECT – CHRIS RIDER, INC.

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to execute a contract with Chris Rider, Inc. for construction of Phase II Long Meadow Park Renovations in the amount of \$307,000.00 with a project contingency in the amount of \$18,420.00 for a total cost of \$325,420.00;

To authorize the City Manager to negotiate and execute change orders for the project provided the cost does not exceed \$18,420.00 for a total cost of \$325,420.00; and

To authorize the City Manager to modify the contract prior to execution provided that modifications do not increase the dollar amount of the contract and are consistent with the general intent of the approved version of the contract was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: PROPOSED SALE OF PROPERTY AT 6408 AND 6412 FAYETTEVILLE ROAD; 6408 FAYETTEVILLE ROAD - PARCEL ID # 149516 - (CITY TRACT # 2002) 6412 FAYETTEVILLE ROAD - PARCEL ID # 149523 – (CITY TRACT # 2003) - NIGHAT WAHEED, ALI WAHEED, HAJIRA RANA AND UMAR WAHEED

To accept the offer of \$590,000.00 from Nighat Waheed, Ali Waheed, Hajira Rana and Umar Waheed to purchase the property at 6408 and 6412 Fayetteville Road;

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To authorize the payment of a five percent commission of \$29,500.00 to Waheed Haq, the N.C. Real Estate Broker representing the successful buyers at closing; and

To authorize the City Manager to sell and the Mayor to convey the property by a non-warranty deed.

Note: This item was approved at the November 9, 2006 Work Session with a vote of 5/0.

SUBJECT: NORTH GARAGE PARKING LEASE AGREEMENTS - ACL III - LUCKY STRIKE

To adopt a resolution that authorizes the City Manager to advertise for upset bids in accordance with G.S. 160A-269 for the lease of 244 parking garage spaces and provides that if no upset bids are received the City Manager may accept the offer from ACL III to lease 244 parking spaces for a period of ten years with an option to renew for two five-year terms at the rate established by City Council which is currently \$45.00 per month per parking space;

To adopt a resolution that authorizes the City Manager to advertise for upset bids in accordance with G.S. 160A-269 for the lease of 30 parking garage spaces and provides that if no upset bids are received the City Manager may accept the offer from Lucky Strike to lease 30 parking spaces for ten years with an option to renew for ten years at the rate established by City Council which is currently \$45.00 per month per parking space; and

To authorize the City Manager to execute the Lease Agreements and make changes to the agreements prior to execution provided such changes do not differ from the intent of the agenda memo.

**Note: This item was approved at the November 9, 2006 Work Session with a vote of 5/0.
Resolution #s 9408 - 9409**

SUBJECT: 2007 CITY COUNCIL SCHEDULE

MOTION by Council Member Stith seconded by Council Member Woodard to adopt the 2007 City Council Schedule; and

To adopt an Ordinance Canceling the Regular City Council Work Session and Regular City Council Meeting July 5, 2007 and July 16, 2007 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #13335

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SUBJECT: REVISION OF CITY OF DURHAM'S MINIMUM HOUSING CODE AND REMOVAL OF TRASH AND UNDERGROWTH FROM PROPERTY ORDINANCE

MOTION by Council Member Stith seconded by Council Member Woodard to adopt an Ordinance Amending portions of Article VI of Chapter 6 and 10 of the Durham City Code pertaining to the Minimum Housing Code and the Removal of Trash and Undergrowth from Property Ordinance was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #s 13336 - 13337

SUBJECT: RECYCLING CONTRACT AMENDMENT 7 – TIDEWATER FIBRE CORPORATION

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to execute Amendment 7 to the contract between the City of Durham and Tidewater Fibre Corporation to provide recycling services for an additional four years; and

To authorize the City Manager to modify the contract if necessary before execution, provided that the modifications do not increase the contract amount and are consistent with the general intent of the existing version of the contract was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: WALLTOWN PARK RECREATION CENTER

To receive a presentation on the Walltown Park Recreation Center.

Note: This item was referred back to the administration – General Services.

SUBJECT: CAMPAIGN FOR DECENT HOUSING 2007 ACTION AGENDA AND 10-YEAR PLAN TO END SUBSTANDARD HOUSING

To receive a presentation from the Campaign for Decent Housing on their 2007 Action Agenda and 10-Year Plan to End Substandard Housing.

Note: A presentation was received at the November 9, 2006 Work Session.

SUBJECT: DURHAM COMPREHENSIVE BICYCLE TRANSPORTATION PLAN

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MOTION by Council Member Stith seconded by Council Member Woodard to adopt the Durham Comprehensive Bicycle Transportation Plan as a guiding document for bicycle improvements throughout the City of Durham was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: THERASIM, INC. CONTRACT - ECONOMIC DEVELOPMENT INCENTIVE

To conduct a public hearing and receive public comments on an economic development incentive contract with TheraSim, Inc;

To authorize the City Manager to execute an economic development incentive contract with TheraSim, Inc. for a maximum amount of \$15,000.00; and

To authorize the City Manager to execute the contract and to make other changes as may be needed so long as they do not increase the amount to be paid by the City nor reduce the benefits to be gained by the City.

Note: This item was deferred to the November 21, 2006 Work Session.

SUBJECT: ABRAXIS BIOSCIENCE, INC. CONTRACT - ECONOMIC DEVELOPMENT INCENTIVE

To conduct a public hearing and receive comments on an economic development incentive contract with Abraxis BioScience;

To authorize the City Manager to execute an economic development incentive contract with Abraxis BioScience, Inc. for a maximum amount of \$31,500.00; and

To authorize the City Manager to execute the contract and to make other changes as may be needed so long as they do not increase the amount to be paid by the City nor reduce the benefits to be gained by the City.

Note: This item was deferred to the November 21, 2006 Work Session.

SUBJECT: CHEEK ROAD AREA BUS SERVICE

To receive a report from the Administration regarding bus service in the Cheek Road area.

Note: Comments were received at the November 9, 2006 Work Session.

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SUBJECT: UNITED YOUTH CARE SERVICE

To receive comments from Betty Sampson and Donald Booker regarding the mental health mentoring program.

Note: Citizen did not appear at the November 9, 2006 Work Session.

SUBJECT: PERFORMANCE AUDIT AND ORGANIZATIONAL ASSESSMENT

To discuss the implementation of a Performance Audit and Organizational Assessment.

Note: This item was referred back to the administration.

SUBJECT: DURHAM PERFORMING ARTS CENTER

To adopt an Ordinance Amending the General Capital Improvement Project Ordinance, fiscal year 2006-2007, as amended, the same being Ordinance #13271 for the purpose of increasing the total appropriation for the design and construction of the Durham performing Arts Center by \$14,578,000.00.

Note: This item was approved at the November 9, 2006 Work Session with a vote of 6/0. Ordinance #13331

[GENERAL BUSINESS AGENDA]

SUBJECT: CONTRACT AMENDMENTS FOR CONTRACT ST-226, STREET REPAIRS AND RESURFACING AND PROFESSIONAL SERVICES FOR CONSTRUCTION ADMINISTRATION - BARNHILL CONTRACTING, INCORPORATED - GREENHORNE AND O'MARA, INCORPORATED

Mayor Pro Tempore Cole-McFadden noted one of questions raised at the Work Session was concerning Barnhill's performance on utilization of SDBE's.

City Manager Baker informed Council that staff has provided a memo that includes responses to questions raised by various Council Members at the Work Session.

Assistant City Engineer Lee Murphy noted on page two of the memo there is a summary of SDBE participation.

Discussion was held by Council on the SDBE goals.

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MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to amend contract ST-226 Street Repairs and Resurfacing with Barnhill Contracting, Incorporated by \$1,128,660.00, this representing a 50% increase over the \$2,257,320.00 previously authorized expenditure to facilitate continuation of the resurfacing construction;

To authorize the expenditure from the 2005 GO Bond fund;

To authorize the City Manager to amend the professional services contract with Greenhorne and O'Mara, Incorporated by \$200,000.00 representing a 50% increase over the \$400,000 previously authorized expenditure to facilitate continuation of the construction administration; and

To authorize the expenditure from the 2005 GO Bond fund was approved at 7:31 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: DURHAM PERFORMING ARTS CENTER PLAZA NAMING RIGHTS AGREEMENT - CAPITOL BROADCASTING COMPANY

To authorize the City Manager to execute the Plaza Naming Rights Agreement between the City of Durham and Capitol Broadcasting Company; and

To authorize the City Manager to make changes to the agreement as may be needed as long as they do not reduce the benefit to be received by the City and are consistent with the intent of the agreement.

Note: The Agreement includes the naming rights agreement with CBC, the related naming rights agreement with the operator and the related Durham Baseball Athletic Park (DBAP) amendments.

Victoria Peterson requested a better understanding of the naming rights of this facility.

City Manager Baker explained the naming rights process.

Assistant City Manager for Economic and Workforce Development Alan DeLisle made comments on the naming rights for five different aspects of the building—plaza, lobby, theatre, stage (2), building. He noted what is being discussed tonight is the naming rights agreement for the plaza with the Capitol Broadcasting Company which is the final financial piece of the puzzle. If this item is approved tonight, the project is a 100% go. He stated Capitol Broadcasting Company has agreed to pay the City \$300,000 a year for the naming rights of the plaza and is paying above market value for this particular naming rights opportunity. He noted there are benefits to this agreement outlined in staff's memo.

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MOTION by Council Member Woodard seconded by Council Member Catotti to authorize the City Manager to execute the Plaza Naming Rights Agreement between the City of Durham and Capitol Broadcasting Company; and

To authorize the City Manager to make changes to the agreement as may be needed as long as they do not reduce the benefit to be received by the City and are consistent with the intent of the agreement was approved at 7:39 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: CONFIRMATION OF ASSESSMENT ROLL – CURB, GUTTER & PAVING ON ALFRED STREET FROM RIDDLE ROAD TO JEROME ROAD

Due to objections, Assistant City Engineer Lee Murphy requested that Council confirm the assessment roll except for the George and Margaret Quiett and Missouri Morris properties, continue the public hearing without further advertising and refer these assessments to a future City Council Work Session for further consideration.

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no further objections, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Woodard seconded by Council Member Cattoti to receive public comments; and

To adopt a resolution confirming the assessment roll for Curb, Gutter and Paving on Alfred Street from Riddle Road to Jerome Road except for the George and Margaret Quiett and Missouri Morris properties, continue the public hearing without further advertising and refer these assessments to a future City Council Work Session for further consideration was approved at 7:41 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: CONFIRMATION OF ASSESSMENT ROLL – CURB, GUTTER & PAVING ON HUNT STREET FROM FOSTER STREET TO MORRIS STREET

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments; and

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To adopt a resolution confirming the assessment roll for Curb, Gutter and Paving on Hunt Street from Foster Street to Morris Street was approved at 7:42 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: CONFIRMATION OF ASSESSMENT ROLL – CURB, GUTTER & PAVING ON ROCKFORD ROAD FROM CHOWAN AVENUE

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments; and

To adopt a resolution confirming the assessment roll for Curb, Gutter and Paving on Rockford Road from Chowan Avenue South to the South Property Line of Tax Map 408-13-5 was approved at 7:42 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

SUBJECT: VOLUNTARY ANNEXATION PETITIONS RECEIVED BY JANUARY 1, 2006 - 5205 & 5145 BARBEE CHAPEL ROAD - BARBEE CHAPEL ROAD ASSEMBLAGE - UPCHURCH PROPERTY – PARKWOOD VOLUNTEER FIRE DEPARTMENT

Mayor Pro Tempore Cole-McFadden opened the public hearing.

Anna P. McLamb, of 150 Fayetteville Street, spoke in favor of this voluntary annexation petition.

The Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive citizens' comments concerning the annexation of the following Voluntary Annexation Area; and

a) FY2006-18 - 5205 & 5145 Barbee Chapel Road

To adopt "An Ordinance Annexing to the City of Durham" the Voluntary Annexation Area [5205 and 5145 Barbee Chapel Road] in accordance with N.C. General Statutes 160A-31 effective from and after December 31, 2006; and

To authorize the City Manager to pay the debt service of the Parkwood Volunteer Fire Department was approved at 7:44 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-

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McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None.
Excused Absence: Mayor Bell.

Ordinance #13332

b) FY2007-01 Barbee Chapel Road Assemblage

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive citizens' comments concerning the annexation of the following Voluntary Annexation Area

To adopt "An Ordinance Annexing to the City of Durham" the Voluntary Annexation Area [Barbee Chapel Road Assemblage] in accordance with N.C. General Statutes 160A-31 effective from and after December 31, 2006; and

To authorize the City Manager to pay the debt service of the Parkwood Volunteer Fire Department was approved at 7:44 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None.
Excused Absence: Mayor Bell.

Ordinance #13333

c) FY2007-02 Upchurch Property

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive citizens' comments concerning the annexation of the following Voluntary Annexation Area

To adopt "An Ordinance Annexing to the City of Durham" the Voluntary Annexation Area [UpChurch Property] in accordance with N.C. General Statutes 160A-31 effective from and after December 31, 2006; and

To authorize the City Manager to pay the debt service of the Parkwood Volunteer Fire Department was approved at 7:45 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None.
Excused Absence: Mayor Bell.

Ordinance #13334

**SUBJECT: PLAN AMENDMENT - 2902 SOUTH MIAMI BOULEVARD (A06-16) –
VAUGHN DEVELOPMENT, LLC**

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To receive public comments on the 2902 South Miami Boulevard Plan Amendment (A06-16); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Commercial to Industrial.

Staff Recommendation: Approval, based on the request being justified and meeting the four criteria for plan amendments.

Planning Commission Recommendation: Approval, 13-0, based on compatibility with surrounding uses.

Mayor Pro Tempore Cole-McFadden opened the public hearing.

City/County Planning Director Frank Duke requested that the public hearing for this item and Item #33 [Zoning Map Change – 2902 South Miami Boulevard (Z06-50)] be opened as a single public hearing pursuant to the Unified Development Ordinance. Mr. Duke briefed Council on the plan amendment and gave summary of the Zoning Map Change which corresponds to the plan amendment. He noted request is consistent with the Comprehensive Plan, Planning Commission voted to approve both the plan amendment and the zoning map change.

Mark Vaughn, representing the applicant, made comments in support of the plan amendment and the zoning map change Z06-50.

No one spoke in opposition to these items.

The Mayor Pro Tem noted she was closing the public hearings on both items [plan amendment and zoning map change].

City/County Planning Director Frank Duke noted pursuant to the ordinance, there has to be a separate vote taken on the plan amendment and zoning map change.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the 2902 South Miami Boulevard Plan Amendment (A06-16); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Commercial to Industrial was approved at 7:48 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Resolution #9414

**SUBJECT: ZONING MAP CHANGE – 2902 SOUTH MIAMI BOULEVARD (Z06-50)
– VAUGHN DEVELOPMENT, LLC**

November 20, 2006

To receive public comments on the zoning map change for 2902 South Miami Boulevard (Z06-50);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z06-50 out of CN and RS-20 and placing same in and establishing same as IL; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, should the pending plan amendment (A06-16) be approved, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, should the plan amendment be approved, based on consistency with the Comprehensive Plan and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 12-1 on September 12, 2006. The Planning Commission finds that the ordinance request is not consistent with the adopted Comprehensive Plan. However, should the governing body approve the pending plan amendment; the ordinance request will then be in compliance with the revised Comprehensive Plan. The Commission believes this request is reasonable and in the public interest and recommends approval based on the information in the staff report and comments received during the public hearing.

[The site is located at 2902 South Miami Boulevard on the west side of South Miami Boulevard, south of Brunson Street and north of Brassfield Road. PINs: 0749-04-52-5760, -5765, -5799]

Discussion on this item was heard during the public hearing for the A06-16 plan amendment.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the zoning map change for 2902 South Miami Boulevard (Z06-50);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z06-50 out of CN and RS-20 and placing same in and establishing same as IL; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, should the pending plan amendment (A06-16) be approved, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:48 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #13338

November 20, 2006

**SUBJECT: ZONING MAP CHANGE (Z06-41) - 1306 COOK ROAD –
NEIGHBORHOOD DEVELOPMENT ASSOCIATES, INC.**

To receive public comments on the zoning map change for 1306 Cook Road (Z06-41);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z06-41 out of RS-20 and placing same in and establishing same as PDR 2.510; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on consistency with the Comprehensive Plan and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 13-0 on September 12, 2006. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing and additional committed elements proffered by the applicant at the meeting.

[The site is located at 1306 Cook Road on the west side of Cook Road, south of Martin Luther King, Jr. Parkway and north of Brown Street. PIN: 0729-01-28-5444]

City/County Planning Director Frank Duke briefed Council on the Zoning Map Change. He noted committed elements are found on page 2 of the staff report that include minimum lot sizes, open space will exceed minimum required by ordinance 27%, provide more tree coverage than is required by ordinance—minimum 21%; sedimentation and erosion control greater than ordinance requirements; provision of unpaved trail; additional landscaping and buffers and a number of road improvements, bus stops and donation of \$500 per dwelling unit to Durham Public Schools for each unit that is proposed within the development plan. He noted this request is consistent with the Comprehensive Plan and the infrastructure capacity will meet the need of this request. He noted staff is recommending approval and Planning Commission recommended approval.

Mayor Pro Tempore Cole-McFadden opened the public hearing.

Proponent

George Stanziale, representing the applicant, noted he was present to answer questions.

To address questions raised by Council Member Catotti, City/County Planning Director Frank Duke noted sidewalk issue for Cook Road is not something the applicant can commit to since it

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is an ordinance requirement and stated the applicant made a committed element to provide tree save areas in excess of the ordinance requirement.

The Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the zoning map change for 1306 Cook Road (Z06-41);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z06-41 out of RS-20 and placing same in and establishing same as PDR 2.510; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:53 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #13339

**SUBJECT: INITIAL ZONING MAP CHANGE – SOUTHAMPTON SUBDIVISION
(Z06-32A) – SPAULDING & NORRIS – WEST SIDE OF HERNDON
ROAD**

To receive public comments on the initial zoning map change for Southampton Subdivision (Z06-32A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RS-20 and RS-10; F/J-B zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the west side of Herndon Road, south of Springmoor Lane and north of Clauson Drive. PINs: 0717-02-96-8518, -8306, -8125, -95-8906, -8718, -8508,

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-8317, -8116, -04-94-8904]

City/County Planning Director Frank Duke briefed Council on the staff report. He reported this is the initial zoning of property newly annexed into the City. Mr. Duke noted the Planning Commission recommended approval consistent with their 2005 resolution which indicates an automatic recommendation of approval for all initial zonings on which there is no change in designation from the City to the County.

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the initial zoning map change for Southampton Subdivision (Z06-32A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RS-20 and RS-10; F/J-B zoning for the property described in the staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:54 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #13340

SUBJECT: INITIAL ZONING MAP CHANGE – CAMERON GROVE (Z06-23A) – MOSS CREEK, LLC

To receive public comments on the initial zoning map change for Cameron Grove (Z06-23A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish PDR 2.240; F/J-B zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

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Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located east of Vintage Hill Parkway and north of Sawmill Creek Parkway. PIN 0846-01-30-5862]

City/County Planning Director Frank Duke briefed Council on the staff report. He reported this is the initial zoning of property newly annexed into the City. Mr. Duke noted staff is recommending approval and the Planning Commission recommended approval consistent with their 2005 resolution which indicates an automatic recommendation of approval for all initial zonings on which there is no change in designation from the City to County.

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the initial zoning map change for Cameron Grove (Z06-23A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish PDR 2.240; F/J-B zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:55 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

Ordinance #13341

SUBJECT: ILLICIT DISCHARGE ORDINANCE

Mayor Pro Tempore Cole-McFadden opened the public hearing. There being no one to speak in support for or against this item, the Mayor Pro Tem closed the public hearing.

John Cox, of Storm Water Services, made comments on this item.

MOTION by Council Member Woodard seconded by Council Member Catotti to receive public comments on the Illicit Discharge Ordinance;

To repeal Section 23 Article V Storm Sewers, of the Durham City Code; and

To adopt an Ordinance Amending Section 23 Article V entitled Storm Water Management of the Durham City Code was approved at 7:56 p.m. by the following vote: Ayes: Mayor Pro

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Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard.
Noes: None. Excused Absence: Mayor Bell.

Ordinance #13342

[ITEMS PULLED FROM CONSENT AGENDA]

**SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR THE DESIGN OF
BETHESDA PARK – SUSAN HATCHELL LANDSCAPE
ARCHITECTURE**

Victoria Peterson asked the City to implement the Workforce Development Strategy Plan with upcoming projects to allow local young people to receive work in this community.

Assistant City Manager for Economic and Workforce Development Alan DeLisle noted this is a good model and stated he along with General Services Manager Mark Greenspan are looking to see how this plan can be incorporated.

MOTION by Council Member Catotti seconded by Council Member Stith to authorize the City Manager to enter into an agreement with Susan Hatchell Landscape Architecture, PLLC in an amount not to exceed \$536,600.00;

To establish a project contingency in the amount of \$53,700.00; and

To authorize the City Manager to negotiate and execute change orders provided the total cost of services does not exceed \$590,300.00 was approved at 8:04 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: CAROLINA THEATRE PHASE II SAFETY PROJECT – BAR
CONSTRUCTION COMPANY, INC.**

MOTION by Council Member Catotti seconded by Council Member Stith to authorize the City Manager to execute a contract with Bar Construction Co., Inc. of Greensboro, North Carolina for construction of the Carolina Theatre Phase II Safety Project in the amount of \$202,105.00;

To authorize the City Manager to establish a project contingency in the amount of \$ 25,000.00 for any unforeseen project costs;

To authorize the City Manager to negotiate and execute change orders for the project provided the cost does not exceed \$ 25,000.00 and the total cost of project does not exceed \$227,105.00; and

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To authorize the City Manager to modify the contract before execution provided modifications do not increase the dollar amount of the contract, and the modifications are consistent with the general intent of the existing version of the contract was approved at 8:04 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: CONTROLLED SUBSTANCE TAX DISTRIBUTION FUNDS AND
FEDERAL ASSET FORFEITURE FUNDS**

Victoria Peterson asked that some of the funds be used for rehabilitation and training instead of purchasing equipment.

City Manager Baker replied that federal asset forfeiture funds can only be used for equipment.

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the use of Controlled Substance Tax Distribution Funds and Federal Asset Forfeiture Funds in an amount not to exceed \$181,609.00 for the purchase of equipment to be used in police operations and investigations was approved at 8:09 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

**SUBJECT: AMERICAN TOBACCO DEAL POINT AMENDMENTS - AMERICAN
CAMPUS, LLC, CAPITOL BROADCASTING COMPANY, INC. - BOVIS
LEVEL LEASE, INC., - DURHAM BULLS ATHLETIC PARK LEASE**

Victoria Peterson asked staff to include a workforce development component for this item.

Mayor Pro Tempore Cole-McFadden asked Ms. Peterson to make an appearance before the local contractors group to share the importance of reaching back and helping our community.

MOTION by Council Member Stith seconded by Council Member Woodard to approve non-binding business deal points relating to amendments to the June 16, 2003, Development Agreement by and among American Campus, LLC, Capitol Broadcasting Company, Inc., the City of Durham and Bovis Level Lease, Inc., the Durham Bulls Athletic Park lease, and related documents was approved at 8:06 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused Absence: Mayor Bell.

[CLOSED SESSION]

MOTION by Council Member Stith seconded by Council Member Woodard to hold a closed session for attorney-client consultation, in order for the City Council to consider and give instructions concerning the handling or settlement of the legal action titled *R.P. Construction Company, Inc. v. The City of Durham*, 06 CVS 00316, pursuant to G. S. 143-318.11(a)(3) was

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approved at 8:09 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Excused
Absence: Mayor Bell.

OPEN SESSION – 8:34 p.m.

No action was taken by the City Council.

There being no further business to come before the City Council, the meeting was adjourned at 8:35 p.m.

Linda Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk